U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10907511

Date: NOV. 27, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a bodybuilder, seeks classification as an alien of extraordinary ability.[1] This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner had a major, internationally recognized award, nor did the foreign national demonstrate that he met any of the four regulatory criteria he initially claimed. We came to the same conclusion within our appellate decision. The Petitioner now submits a combined motion to reopen and reconsider and asserts that he meets the same criteria we discussed within our appellate decision. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[2] Upon review, we will dismiss the motions.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[3]

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[1] *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).
[2] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[3] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

A motion to reopen is based on *new facts* that are supported by documentary evidence, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

II. ANALYSIS

In denying the petition, the Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), specifically issuing an adverse determination relating to prizes or awards, membership, published material, and a leading or critical role. In dismissing the Petitioner's appeal, we came to the same conclusion. Within the motions, the Petitioner addresses each of these same criteria. For the reasons discussed below, we determine that the Petitioner has not overcome our reasoning within the appeal dismissal through new evidence in its motion to reopen, nor has it established that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy as required to meet the requirements for filing a motion to reconsider.

A. Procedural Shortcomings

As an initial issue, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. We note that the Petitioner did not submit a statement relating to this mandate. Pertaining to this shortcoming, the regulation at 8 C.F.R. § 103.5(a)(4) requires that a motion that does not meet applicable requirements shall be dismissed. As the Petitioner did not provide the required statement, the motions must be dismissed based solely on this essential regulatory requirement.

Second, the Petitioner has not met the requirements for a motion to reopen. A motion to reopen must state new facts and be supported by documentary evidence.[4] We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Notably, the Petitioner does not offer any new facts that are supported by documentary evidence. Instead, the Petitioner mirrors arguments made in his previous filing on appeal. Accordingly, we will dismiss the motion to reopen.

B. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.[5]

[4] 8 C.F.R. § 103.5(a)(2).
[5] 8 C.F.R. § 103.5(a)(3).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

Within our decision on the appeal, we determined that although the Petitioner documented his receipt of prizes or awards, he did not establish that the accolades were nationally or internationally recognized. On motion, the Petitioner contests our decision relating to several competitions. Within his motion to reconsider, the Petitioner claims that the events where he received awards were internationally recognized events and were covered in major publications.

As it relates to the International Federation of Bodybuilding and Fitness's (IFBB) [redacted] Central American and Caribbean Fitness Championships held in the [redacted] the Petitioner finished in first place in the [redacted] category. The Petitioner has demonstrated that this placement at this competition satisfies the plain language requirements of this criterion. As a result, it is unnecessary that we discuss his remaining claims under this criterion, but we will broadly analyze all his prizes and awards within any final merits determination if the Petitioner meets at least two other regulatory criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In our appellate decision, we acknowledged the Petitioner's membership in the IFBB and the Venezuelan Federation of Bodybuilding and Fitness (FVFC). We concluded that he did not establish that either of those organizations, or any of their teams, require outstanding achievements as judged by recognized national or international experts. Coming to that conclusion we considered the letter from [redacted] of the FVFC, and we noted that while he stated the Petitioner "participated as an athlete of the national team," he did not address the membership requirements of the organization or any of its teams.

On motion, the Petitioner provides his own assessment of the membership requirements for the FVFC stating "you must be a bodybuilder with outstanding achievements," and he points to [redacted]'s letter as proving he is a member who possesses outstanding achievements. The Petitioner asserts that we either misunderstood or ignored [redacted]'s letter. A review of [redacted]'s letter does not reveal any information relating to FVFC membership requirements. The record further lacks other evidence related to FVFC's membership requirements, such as bylaws, that might demonstrate that the Petitioner's membership satisfies the plain language of the criterion.

Within his motion, the Petitioner does not address his IFBB membership and we consider his claims associated with that organization to be abandoned.[6] As a result, the Petitioner has not demonstrated that our decision was based on an incorrect and he has not shown that he possesses the type of membership as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

[6] *See e.g, Matter of Zhang*, 27 I&N Dec. 569 n.2 (BIA 2019). *See also Walker v. Sankhi*, 494 F. App'x 140, 142 (2d Cir. 2012) (citing *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

Our decision dismissing the appeal discussed a YouTube channel associated with Muscular Development Latino, noting the video containing the Petitioner garnered very few views, and recognized that the Petitioner offered several articles that may have mentioned him but that were not "about him." We further noted deficiencies with translations of documents that the Director discussed when he denied the petition, but the Petitioner failed to remedy within the appeal other than to claim that the certified translations were adequate. Due to those shortcomings, we did not evaluate whether that material qualified as major media.

Within the motions, the Petitioner states that we erred in our appellate decision when we determined "that the articles do not mention him." To the contrary, we acknowledged that his name was listed as one of many athletes, but that the article itself was not about him. Consequently, this is not an accurate claim of an error, and it will not serve as a basis for reconsideration under this criterion.

On motion, the Petitioner further claims that although the articles mention his name alongside other competitors, that as a member of the national team, "this does not mean that the article was not about his achievements." However, the motion brief does not identify any specific article the Petitioner wishes to rely on within this proceeding. A review of the material reveals several articles that are about competitions with some articles offering a brief description of the event, and all of which list the Petitioner's name among dozens of competitors in various classes. This material is clearly not about the Petitioner. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" and an article that is not about the Petitioner does not meet this regulatory criterion.[7]

On the issue of the coverage qualifying as major media, the articles appeared on mdlatino.com and culturismoweb.com. To demonstrate these articles appeared in a qualifying publication type, the Petitioner should submit evidence showing that each publication's circulation is high in comparison to other circulation statistics and establish its intended audience.[8] The Petitioner only provided evidence relating to mdlatino.com in the form of printouts from a web analytics service in an attempt to demonstrate it is a form of major media. The analytics for mdlatino.com lists a ranking of 699,906. The Petitioner does not explain what that ranking represents in general or how it compares to the circulation statistics of other competitors. It is not clear from this evidence that this website is a form of major media. Moreover, the Petitioner did not provide any documentary evidence associated with culturismoweb.com to show that it qualifies as major media.

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[7] *See Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D. Cal. Apr. 9, 2020) (quoting *Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012) (finding that articles that are about a team or a competition and only briefly mention an alien do not satisfy the published material criterion); *see also generally, Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer).

[8] USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9 (Dec. 22, 2010) (Policy Memo), http://www.uscis.gov/legal-resources/policy-memoranda.

Because the Petitioner has not offered probative evidence demonstrating that (1) the published material was about him rather than about competitions, and (2) the publications were a form of major media, he has not shown that our adverse appellate decision relating to this criterion was incorrect.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

In dismissing the appeal, we noted the Petitioner's claims of performing in a leading and critical role for the FVFC "by competing and winning at . . . international tournaments" and by working as "a national bodybuilding instructor." We observed that the Petitioner did not show how his competition finishes affected the FVFC resulting in him performing in a critical role for the organization. We additionally concluded that considering his "national bodybuilding instructor" title, the Petitioner did not establish the role and duties associated with that title, or how his activities had affected the FVFC organization as a whole rather than the individual athletes he trained. Finally, we decided that the Petitioner did not demonstrate that the FVFC enjoys a distinguished reputation.

Within the Petitioner's motions, he disagrees with our assessment of his role for FVFC and claims that his role was critical because his achievements brought pride to the organization and to his home country, and that having champions on your team is "crucial" for any given field. While the Petitioner disagrees with our conclusion, he does not cite to any law or precedent decision that establishes that our decision was based on an incorrect application of law or policy, as required by the regulation governing motions to reconsider.

Rather, on motion the Petitioner broadly asserts that we did not consider the entire record, held his case to a higher than required burden of proof, and that we manipulated and misrepresented the evidence. Notably, the Petitioner did not offer specific examples of any of these infractions. Upon review of the record in its totality, we find the Petitioner has failed to establish his eligibility under this criterion.

First, as it relates to the Petitioner's role for organization's or establishments, he claimed the roles he performed for FVFC as an athlete and an instructor. Regarding his time as an athlete, he described his first-place finishes in [redacted] competitions resulting in him serving as the Venezuelan champion. We note that the record contains three certificates for his performances as [redacted] but he did not provide evidence that he was the Venezuelan champion.

[redacted]s letter only described the Petitioner's competitive finishes and did not address how he may have led the organization or how he contributed to it in a critical manner. While we recognize the Petitioner's top-placed finishes in some competitions, he has not established those were of significant importance to the outcome of the organization's activities. We note that USCIS policy provides that letters from those with personal knowledge of the significance of the alien's leading or critical role can be particularly helpful to USCIS officers in making a determination under this requirement, provided the letters contain detailed and probative information that specifically addresses how the alien's role for the organization or establishment was leading or critical.[9] As we noted, [redacted]s letter did not contain such detailed and probative information.

[9] Policy Memo at 10.

As it relates to his performance as an instructor, the Petitioner only provided a translated document indicating he fulfilled all the FVFC requirements to obtain an instructor's certificate. We note the letter from [redacted] described the foreign national's participation in bodybuilding events, but he did not describe any leading or critical role the Petitioner may have performed for the organization as in instructor. Although [redacted] was one of four signatories on the certificate identifying the Petitioner as an instructor for FVFC, the alien has not established how he may have impacted this organization as an instructor. Evidence under this criterion must provide specifics relating to how the Petitioner's role was critical to the organization as a whole, and the foreign national has not satisfied that burden here.[10]

Turning to the role the Petitioner performed for IFBB, we do not consider the letter from [redacted], the IFBB [redacted], to aid the Petitioner under this criterion. [redacted]'s letter merely conveyed that the Petitioner was included on a list of other athletes who were receiving a new IFBB Elite Card. The Petitioner has not described how [redacted]'s letter contains any information establishing that the foreign national's role in the IFBB was leading or critical as required by the regulation. None of the material within the record establishes what impact the Petitioner's performance in any role had on the named organizations. The letters did not identify how the Petitioner has contributed in a way that is of significant importance to the outcome of the organizations or their activities. As such, the record does not demonstrate that the Petitioner held a leading or critical role for either the FVFC or IFBB.

The Petitioner further contends in his motion that the record contained evidence related to the distinguished reputation of the two organizations. The Petitioner specifically refers to the letters from [redacted] and [redacted] in his motion, but he failed to explain how either author established that the FVFC or the IFBB enjoy a distinguished reputation. As we noted above, these letters do not contain information relating to this criterion's requirements. Additionally, the Petitioner did not offer additional evidence from outside these organizations that might demonstrate they enjoy a distinguished reputation, "marked by eminence, distinction, or excellence."[11] As a result, the Petitioner has not demonstrated that any of the named organizations have a distinguished reputation.

Considering the Petitioner's claims and supporting evidence, he has not demonstrated that our adverse decision under this criterion was incorrect, nor does the record support a determination in his favor.

C. Claimed Summary Errors

As a closing note within his motion, the Petitioner offers a general statement that we did not: adequately address the bases in the petition's denial; present any relevant statutory, regulatory, or case law to support our decision; and support our findings with substantial evidence. We note that our decision on the appeal addressed each of the bases within the Petitioner's appeal brief, and we have revisited those topics in this decision. Furthermore, as our appellate decision cited to the relative statute, regulation, and USCIS policy, we do not agree that the appellate conclusion was not legally supported. Finally, it is unclear what the Petitioner means by indicating our decision was not supported by substantial evidence, as he cites to

[10] *See Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019); *see also Noroozi*, 905 F.Supp.2d at 545.
[11] Policy Memo at 10–11.

no statute, regulation, or precedent decision to support his statement. However, we note that in visa proceedings, the petitioner bears the burden of proof. Section 291 of the Act; 8 U.S.C. § 1361.

III. CONCLUSION

As the Petitioner has only satisfied one criterion when he must meet at least three, he has not demonstrated that meeting the awards criterion alone would alter our decision to dismiss his appeal. Therefore, he has not shown that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.